IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 399 of 2000

Date of Decision : September 7, 2007

State of H.P. …Appellant.

Versus:

Ramesh Chand …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. Ashok Chaudhary, Addl. A. G.

For the respondent : Mr. N. K. Thakur, Advocate.

Sanjay Karol, J. (Oral).

The present appeal arises out of the judgment dated 18.1.2000 passed by the Judicial Magistrate Ist Class(II), Hamirpur in Criminal Case No. 33-I of 1996 titled as State v. Ramesh Chand, acquitting the accused of the charged offence.

Vide DD entry No. 5 dated 17.11.1996 entered with Police Station, Hamirpur, it was recorded that at about 8.30 A.M. in between Chabutra and Bharwali, a Tractor and Bus met with an accident. Based on the same, a police team for investigation was dispatched and FIR No. 67/96 dated 17.11.1996 (Ext.PW-

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

8/A) was registered under Sections 279 & 427 IPC with Police Station, Sujanpur at about 11.00 A.M.

The investigation was carried out by the I.O. Om Chand (PW-8) who after recording the statement of complainant Kamaldeep (PW-1) (Ext.PW-1/A), sent a rukka to Police Station on the basis of which the aforesaid FIR was registered. Spot map Ext.PW8/C was also prepared and the bus was impounded vide memo Ext.PW-2/A. The photographs were also taken and the vehicle was got mechanically examined.

After completion of the investigation, challan was presented in the Court and the accused was summoned. Notice of accusation was put to the accused who did not plead guilty and the matter was put to trial. In all, the prosecution examined eight witnesses and thereafter the statements of the accused u/s 313 Cr.PC was recorded.

The Court below has acquitted the accused primarily on the ground that the version of Shri Kamaldeep (PW-1) i.e. driver of the Tractor whose vehicle was damaged in the accident as also Shri Parveen Kumar (PW-6) the only eye witness does not inspire confidence and the prosecution has not been able to prove its case beyond reasonable doubts.

I have examined the statements of the parties and also perused the material on record. From the statement of PW-1, it is clear that not only there are major improvements in his statement but the same does not inspire confidence. In his

statement, he has specifically stated that the offending vehicle was being driven at a speed of 30 kms. per hour. He has deposed that the tyres of the tractor were also damaged which fact stands falsified by the statement of Shri Pursotam Lal (PW-3) who had mechanically examined both the offending vehicles i.e. Tractor as also the bus. From his statement, it is clear that the tyres of the Tractor were intact. In this view of the matter, not much credence can be given to the deposition of the eye witness particularly when it has come in his statement that no injury was caused to any person and the driver had agreed to share the cost of the repair of both the vehicles in equal shares. Shri Parveen Kumar (PW-6) has admitted in his cross-examination that he has stated whatever was told to him, as such, he is a tutor witness.

Learned counsel for the appellant has contended that the defence taken by the accused is not in consistent. In his statement recorded u/s 313 Cr.PC, he has taken the defence that the patta of his bus broke due to immediate applying of the brakes which resulted into the incident whereas from the line of cross-examination it can be inferred that the defence set up that the complainant was at fault which resulted into accident.

In my view, the falsity of the defence would not prove the case of the prosecution. The prosecution has to prove its case beyond all reasonable doubts which in the present case is absent. Further, none of the witnesses have stated that the

accused person was driving the vehicle in such a rash and negligent manner so as to cause endanger to human life or was likely to cause hurt or injury to any other person.

Keeping in view the facts and circumstances, I see no reason to interfere with the findings and the judgment passed by the Court below. The appeal is accordingly dismissed. The bail bonds of the accused stand discharged.

(Sanjay Karol), J.

September 7, 2007
(rana)